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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

BRIGHAM YOUNG UNIVERSITY, a Utah
Non-Profit Education Institution; and Dr.
DANIEL L. SIMMONS, an individual,

Plaintiffs,

vs.

PFIZER, INC., a Delaware corporation; G.D.
SEARLE & COMPANY, a Delaware
corporation; G.D. SEARLE LLC, a Delaware
limited liability company; MONSANTO
COMPANY, a Delaware corporation; and
PHARMACIA CORPORATION, a Delaware
corporation,

Defendants.

**PLAINTIFFS' MOTION TO SET DATE
TO AMEND COMPLAINT**

Case Number: 2:06CV-890-BTS (BCW)

Judge Ted Stewart

Magistrate Judge Brooke C. Wells

Plaintiffs Brigham Young University and Dr. Daniel Simmons (collectively, “BYU”) ask the Court to amend the current scheduling order to allow BYU to file an amended complaint on or before 31 July 2010. The current scheduling order has long since become obsolete as a result of delays stemming from Pfizer’s discovery abuses.¹ In part based on those discovery abuses, the Court extended the deadline for BYU to file its amended complaint to 10 August 2009.² Since then, the parties have informally agreed to extend the deadline for amending the pleadings several times, but Pfizer refuses any further extensions. Hence, BYU needs to formally seek the Court’s intervention.

On 30 July 2007, the Court issued its first scheduling order setting a date of 31 May 2008 as the “last day to file motion to amend pleadings.” The 30 July scheduling order further contemplated that, by the time BYU amended its complaint, fact discovery would be nearly completed. BYU planned to keep 31 May 2008 date for amending its complaint. But in late 2007, BYU began uncovering Pfizer’s continuing strategy of perpetuating its fraud through discovery misrepresentations. As the Court is aware:

- Between July and December 2007, Pfizer claimed that its production was complete and that any documents that seemed to be missing did not exist. In support, Pfizer misrepresented that it had collected all the relevant documents for the *Rochester* litigation and had produced all those documents to BYU. Also, as Pfizer misrepresented, no relevant biological materials existed and not many documents referenced BYU because BYU’s technology “did not work.”³
- BYU filed a motion to compel on 10 January 2008, seeking a full production of relevant documents.

¹ For example, under the current scheduling order, fact discovery was scheduled to be completed 31 July 2009. Under the current scheduling order, BYU had until 1 April 2009—four months before the scheduled end of fact discovery—to amend its Complaint.

² Order Granting Motion to Amend Scheduling Order, 15 Jul 09, Dkt. 277.

³ BYU assumes the Court’s familiarity with Pfizer’s early discovery misrepresentations, and for brevity, does not repeat them in detail here. A detailed recitation of Pfizer’s misrepresentations can be found in Plaintiffs’ Memorandum in Support of BYU’s Motion for Dispositive Sanctions, 10 Mar 10, pp. 12-52, Dkt. 350.

- On 26 March 2008, the Court ordered Pfizer to “provide a complete production” within 60 days.⁴
- As time passed and Pfizer still had not complied with the Court’s 26 March Order and had not completed its production, BYU and Pfizer agreed to extend the deadline to amend the Complaint to 1 April 2009—giving BYU time to review the documents Pfizer would produce in compliance with the Court’s Order.⁵
- On 14 January 2009, BYU filed its first sanctions motion, which the Court granted on 28 October 2009.⁶
- On 18 November 2009, Pfizer produced the Seibert file, but continued to withhold the relevant metadata about why the Seibert file was missed during Pfizer’s Herculean search.
- After receiving and reviewing the Seibert file metadata, on 10 March 2010, BYU filed its Motion for Dispositive Sanctions.
- Pfizer admits that it is still withholding (and has now sought a protective order with respect to) the crime/fraud litigation documents. Pfizer also admits that it is still withholding the Chesterfield collection.
- The parties agreed that BYU would have until 8 April 2010 to file an amended complaint.⁷ BYU requested additional time to file an amended complaint, but Pfizer refused—instead suggesting that BYU could file this motion by 12 April 2010 with the same force and effect as if it had been filed on or before 8 April 2010.⁸

BYU has been working diligently to review millions of documents—even as Pfizer continues to reveal and produce more documents. BYU believes the newly-produced documents warrant an amended complaint.

Though BYU believes that it may continue to obtain more relevant documents (and though BYU is hesitant to amend its Complaint because Pfizer’s answer should be stricken), in

⁴ Order Granting BYU’s Motion to Compel Immediate Production of Documents, 26 Mar 08, Dkt. 106.

⁵ Order Granting Stipulated Motion to Amend and Amended Scheduling Order, 23 Oct 08, Dkt. 159.

⁶ Plaintiffs’ Motion for Sanctions, 14 Jan 09, Dkt. 179.

⁷ Ltr. from G. Haley to M. Bettilyon, 29 Oct 09, Ex. 1.

⁸ Email from G. Haley to M. Bettilyon, 8 Apr 09, Ex. 2.

light of Judge Stewart's recent order setting a trial date of 31 January 2011, BYU is prepared to set a date before which it will file an amended complaint.

BYU requests that the Court issue an order setting 31 July 2010 as the date for BYU to amend its Complaint.

RESPECTFULLY SUBMITTED this 12th day of April 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2010, I electronically filed the foregoing PLAINTIFFS' MOTION TO SET DATE TO AMEND THE COMPLAINT with the Clerk of the United States District, District of Utah Central Division, using the CM/ECF system which sent notification of such filing to the following:

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s/ Keith C. Ricker